

Anthony J. Viola
Andre K. Cizmarik
EDWARDS ANGELL PALMER & DODGE LLP
Attorneys for Plaintiff Sherman Gottlieb
750 Lexington Ave.
New York, NY 10022
(212) 308-4411

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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|-----------------------|---|------------------------|
| ----- | X | |
| SHERMAN GOTTlieb, | : | 04-CV-4202 (ILG) (VVP) |
| | : | |
| Plaintiff, | : | |
| | : | |
| -against- | : | |
| | : | |
| CARNIVAL CORPORATION, | : | |
| | : | |
| Defendant. | : | |
| ----- | X | |

**DECLARATION OF ZACHARY W. SILVERMAN IN SUPPORT OF SHERMAN
GOTTLIEB'S MOTION IN LIMINE TO EXCLUDE THE TESTIMONY
OF FREDERICK STEIN FOR WHICH HE LACKS PERSONAL KNOWLEDGE**


I, ZACHARY W. SILVERMAN, declare under the penalty of perjury that:

1. I am an attorney duly admitted to practice in the state of New York and before the bar of this Court, and I am associated with the firm of Edwards Angell Palmer & Dodge LLP, which represents plaintiff Sherman Gottlieb. I submit this declaration in support of Mr. Gottlieb's Motion in Limine to Exclude the Testimony of Frederick Stein for Which He Lacks Personal Knowledge.

2. Annexed as **Exhibit A** is a true and correct copy of select excerpts from the deposition testimony of Frederick Stein, dated April 24, 2007.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
March 1, 2010



ZACHARY W. SILVERMAN

EXHIBIT A

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

SHERMAN GOTTlieb,
Plaintiff,

04-CV-4202

-against- (ILG) (VVP)
CARNIVAL CORPORATION,
Defendant.

-----X

April 24, 2007

10:10 a.m.

30(b)(6) deposition of FREDERICK STEIN, taken
by Plaintiff, pursuant to Notice, at the offices of
Edwards Angell Palmer & Dodge, LLP, 750 Lexington
Avenue, New York, New York, before Nancy R.
Sullivan, a Shorthand Reporter and Notary Public.

HUDSON REPORTING & VIDEO, INC.

124 West 30th Street, 2nd Fl.

New York, New York 10001

Tel: 212-273-9911 Fax: 212-273-9915

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1 Stein
 2 A. 1982 -- excuse me, 1986.
 3 Q. And your degree was?
 4 A. BSE of electrical engineering.
 5 Q. Did you attend any postgraduate
 6 schools?
 7 A. No, I did not.
 8 Q. How long have you been employed at
 9 Carnival?
 10 A. It will be 15 years this November.
 11 Q. So when did you first start working
 12 at Carnival?
 13 A. November 30, 1992.
 14 Q. When you started at Carnival, what
 15 was your position there?
 16 A. Inside sales representative.
 17 Q. Now, what were your duties at the
 18 time of inside sales rep?
 19 A. Take calls from travel agents and
 20 you work in tandem with what we call the
 21 business development manager or our field sales
 22 reps, and you try to assist the travel agent
 23 with anything from ordering brochures to
 24 resolving problems or issues that they would
 25 normally call upon their outside sales rep for.

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1 Stein
 2 Q. And is the outside sales rep an
 3 employee of Carnival?
 4 A. Yes.
 5 Q. And how long did you hold the
 6 position as inside sales rep?
 7 A. About a year and a half.
 8 Q. And so at some point in time in
 9 1994, you changed positions?
 10 A. That's correct.
 11 Q. And do you recall what position you
 12 changed to?
 13 A. I initially changed to our info
 14 systems department. I honestly don't recall the
 15 exact title, but I was essentially working to
 16 resolve cases that you would call the help desk
 17 for with computer problems. And stayed there
 18 for about six months.
 19 Q. And at some point in 2004, you
 20 changed your position at Carnival?
 21 A. Right.
 22 Q. And what position did you attain
 23 then?
 24 A. It was called marketing coordinator
 25 and it was --

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1 Stein
 2 MR. SALTARELLI: I'm sorry, did you
 3 say 2004 or 1994.
 4 MR. CIZMARIK: I said 2004, which
 5 is wrong.
 6 A. Yes, I heard 1994 in my head.
 7 Q. So why don't we clean up this
 8 record that I muddled.
 9 At some point in time in 1994 then,
 10 you left the info systems department and you
 11 joined the marketing department?
 12 A. Correct.
 13 Q. What position did you have in the
 14 marketing department?
 15 A. Marketing coordinator.
 16 Q. What were your responsibilities
 17 there?
 18 A. I would be responsible for running
 19 reports of travel agent production, for making
 20 adjustments to travel agent commission levels,
 21 that's the basics.
 22 Q. How long did you hold the position
 23 of marketing coordinator?
 24 A. I don't remember the exact timing
 25 because I never actually changed positions.

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1 Stein
 2 What happened is my role grew and I was given
 3 additional responsibilities over time and was
 4 then promoted to partnership marketing
 5 supervisor, continuing to do the same duties
 6 that I was doing but just adding on some
 7 additional responsibilities.
 8 Q. What were the additional
 9 responsibilities that were added on?
 10 A. Instead of just following
 11 instructions to move a travel agent's commission
 12 from X to Y based on what my supervisor might
 13 have said, I was given the latitude to make
 14 those judgments on my own and to update their
 15 commissions.
 16 Q. And how long did you hold the
 17 position as partnership marketing supervisor?
 18 A. I want to say it was about two
 19 years, and then I was promoted to manager.
 20 Q. What year were you promoted to
 21 manager?
 22 A. I don't recall exactly.
 23 Q. What department were you promoted
 24 to manager in?
 25 A. I have been in the same department

3 (Pages 6 to 9)

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1 Stein
2 the whole time.
3 Q. Marketing department?
4 A. Right.
5 Q. How, if any, did your duties change
6 when you became manager?
7 A. My boss had taken on the overall
8 responsibility for managing the commission
9 levels of more agents than she had been
10 previously and delegated that responsibility to
11 me. I would have a section of agents that we
12 call superagents that are our top agents, and we
13 took on the role of negotiating their
14 agreements, and I was delegated most of the
15 responsibility.
16 Q. How long did you hold the position
17 as manager?
18 A. That was approximately two years,
19 and I was promoted to director again, staying
20 within the same department.
21 Q. Do you recall when you were
22 promoted to director?
23 A. I don't recall exactly, but it was
24 in the neighborhood of five to six years ago.
25 Q. Is that the position you currently

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1 Stein
2 We also track and report on the
3 performance of our travel agents in terms of
4 number of passengers or guests traveled. We
5 track the performance of Carnival's field sales
6 force and also establish their goals and monitor
7 their achievement of their goals and process
8 their incentives.
9 Q. Does that about cover your
10 responsibilities at present?
11 A. Yes.
12 Q. What is the role of the department
13 of business development services?
14 A. That is the new name for my
15 original department which was called inside
16 sales, and they worked with generally two or
17 three of our business development managers,
18 which are the name we give to our field sales
19 force, and they, in tandem with their partner,
20 call over the phone on the travel agents within
21 their respective territories. They also answer
22 incoming calls from travel agents and generally
23 work with the BDM to develop and encourage
24 additional sales from the travel agents.
25 Q. Is that a group within the

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1 Stein
2 hold?
3 A. Yes.
4 Q. I understood based on interrogatory
5 responses that you are the director in the
6 department of agency compensation?
7 A. Right.
8 Q. Is the department of agency
9 compensation a subgroup within the department of
10 marketing?
11 A. Yes, it is.
12 Q. What are your duties as director of
13 department of agency compensation?
14 A. Oversee the commission levels of
15 all of our domestic and -- well, North American
16 travel agents, U.S. and Canada and negotiate
17 their commission agreements.
18 My group is also responsible for
19 reimbursing cooperative advertising expenses
20 where we jointly do marketing with travel
21 agents. We are also responsible for maintaining
22 the travel agent database which stores the
23 travel agent's profile information, name,
24 address, phone, fax number, et cetera, et
25 cetera.

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1 Stein
2 department of marketing?
3 A. No, it is not.
4 Q. What is the role of the department
5 of revenue management?
6 A. They oversee the pricing of our
7 voyages and they are tasked with managing the
8 revenue and bringing in the highest possible
9 revenue for each voyage.
10 Q. Now, the department of revenue
11 management was identified in Carnival's
12 interrogatory responses as a department which
13 sends faxes to travel agencies to promote
14 special rate offers. Do you agree with that?
15 A. Yes.
16 Q. Are there any other departments at
17 Carnival that send faxes to travel agencies to
18 promote special rate offers?
19 A. Not to specifically promote special
20 rate offers, with the exception that on a very
21 rare occasion, business development services
22 might send a fax to promote a travel agent rate
23 where we were offering a special specifically
24 for the travel agent's use, not to sell to
25 consumers.

4 (Pages 10 to 13)

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1 Stein
 2 agent asking us to make those changes.
 3 Q. But at some point in time, the
 4 information from the Outlook program gets
 5 downloaded into the mainframe?
 6 A. It is keyed in manually.
 7 Q. How often is that done, the keying
 8 in, is it done on a daily basis?
 9 A. Yes.
 10 Q. Does everybody in the agency
 11 profile desk have access to the Outlook program?
 12 A. Yes.
 13 Q. How many people are in the agency
 14 profile desk group?
 15 A. There are two people that is their
 16 primary function. There is the manager of
 17 agency compensation who also has access and
 18 ability to make changes.
 19 Q. Who is the manager?
 20 A. That's Angela Morales.
 21 Q. Who is the other individual? You
 22 said there were two people?
 23 A. Right, there is two people whose
 24 main task is to make the update, there is
 25 Bridget Warren and Dunia Gomez, recently

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1 Stein
 2 married, so if that name was given before, it
 3 might be listed as Dunia Castro. The other
 4 person is Bridgett Warren.
 5 Q. Am I correct that Carnival
 6 conducted a search for written communications
 7 from Sherman Gottlieb regarding his request to
 8 cease faxing, and you did not locate any
 9 documents?
 10 A. That is correct.
 11 Q. Carnival is also not able to locate
 12 any internal records regarding any oral
 13 communications from Sherman Gottlieb regarding
 14 his request to cease faxing?
 15 A. That is also correct.
 16 Q. Can you tell me in general terms
 17 what Carnival did to search for any evidence of
 18 written or oral requests from Sherman Gottlieb
 19 to stop faxing?
 20 A. We searched through our Outlook
 21 program for any written requests that had been
 22 received. Oral requests, had they been
 23 received, would have been acted upon and entered
 24 into the agency profile.
 25 Q. So you checked the Outlook program,

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1 Stein
 2 and you also check the mainframe?
 3 A. Correct.
 4 Q. Any other places that would have
 5 been obvious places to look or are those the two
 6 main places?
 7 A. Those are the two main places. We
 8 obviously also conferred with each of our
 9 members of the team to make sure that they did
 10 not have any recollection of any requests from
 11 Mr. Gottlieb.
 12 Q. When you say members of the team,
 13 who are you referring to?
 14 A. The agency profile desk.
 15 Q. And the two people that are at the
 16 agency profile desk are the manager of the
 17 agency profile desk -- have they been
 18 continuously employed by Carnival in that
 19 position since March of 2001?
 20 A. The manager has. The other two
 21 individuals have not.
 22 Q. And were there other individuals in
 23 that department from actually March of 1999 to
 24 the present who are no longer in that department
 25 now?

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1 Stein
 2 A. Yes.
 3 Q. And are they still employed by
 4 Carnival?
 5 A. No, they are not.
 6 Q. Do you recall their names?
 7 A. I do.
 8 Q. And they are?
 9 A. Diego Ramirez, Anita Abuathareh and
 10 one more name, Thea Glinton.
 11 Q. What's the last name?
 12 A. G-l-i-n-t-o-n.
 13 Q. When did Diego leave the employment
 14 of Carnival?
 15 A. I don't recall the specific date.
 16 I actually made a note of that in case you asked
 17 it, which I can help you if you like.
 18 Q. We will leave a blank spot in the
 19 record and when the witness has a chance to
 20 review the transcript, he can fill it in.
 21 A. _____
 22 Q. Do you recall when Anita left the
 23 employment of Carnival?
 24 A. I think the same. I do not recall
 25 the exact date.

12 (Pages 42 to 45)

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1 Stein
 2 Q. Let's leave a blank spot there as
 3 well.
 4 A.
 5 Q. Do you recall when Thea left the
 6 employment of Carnival?
 7 A. That one was more recent, it was
 8 August of 2006.
 9 Q. And the two individuals at the
 10 agency profile desk who are now responsible for,
 11 among other things, keying in requests from
 12 travel agents, when did they begin employment at
 13 the agency profile desk?
 14 A. Dunia Gomez began employment
 15 approximately one year ago. Bridgett Warren, I
 16 would have to look up the exact date.
 17 Q. And an approximate date would be?
 18 A. Sometime after 2003.
 19 MR. CIZMARIK: Why don't we leave a
 20 blank spot in the record to fill in the
 21 exact date.
 22 A.
 23 Q. Carnival has indicated that it
 24 believes it was authorized by Sherman Gottlieb
 25 to send faxes to him. And I would like to know

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1 Stein
 2 what documents Carnival is relying on for that
 3 proposition?
 4 MR. SALTARELLI: Objection to the
 5 form of the question.
 6 A. Mr. Gottlieb, his travel agency
 7 profile was created in March of 1999 at his
 8 request. At that time he gave us his fax
 9 number. At that time Carnival did not require
 10 any written documentation from the travel agent
 11 in order to begin doing business with them.
 12 As soon as his profile was entered
 13 into our computer system, we would have begun
 14 sending promotion faxes. Since we have no
 15 objection to him ever receiving those faxes, we
 16 believe that we had his consent to do so.
 17 Q. Just so I am clear, back in March
 18 of 1999, it was Carnival's policy to not seek
 19 affirmative consent from travel agents to send
 20 promotional faxes, but rather it relied on its
 21 travel agents' silence as implicit consent.
 22 MR. SALTARELLI: Objection to the
 23 form.
 24 A. That would be an accurate way of
 25 stating it.

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1 Stein
 2 Q. Are there any documents that were
 3 sent to you by Mr. Gottlieb in March of 1999
 4 that would suggest that he gave consent to
 5 receive faxes?
 6 A. None that we may have a record of.
 7 There was a document that we would have sent him
 8 on entry of his profile into our computer system
 9 asking him to verify if the information was
 10 correct, to notify us of any changes and also to
 11 send back to us some additional documentation.
 12 However, we did not have any
 13 requirement to follow up and insure that we
 14 received that documentation in order to continue
 15 doing business with him.
 16 Q. And any of that documentation from
 17 the March 1999 time period would no longer be in
 18 existence pursuant to Carnival's four-year
 19 document -- pursuant to Carnival's document
 20 retention policy which destroys documents older
 21 than four years old?
 22 A. Right. That policy was not in
 23 place -- well, I would have to double-check when
 24 the policy was in place. However, when the
 25 lawsuit was initially filed, it was 2004, so we

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1 Stein
 2 are just about five years from events, so yes,
 3 the records should have been destroyed at that
 4 time.
 5 Q. So going forward in time from the
 6 March 1999 time period, are there any documents
 7 which Carnival has in its possession which it is
 8 relying on for the proposition that Sherman
 9 Gottlieb authorized Carnival to send him
 10 promotional faxes?
 11 A. In February of 2004, subsequent to
 12 his profile having been deactivated in our
 13 system due to lack of activity, he requested
 14 that his profile be reactivated, and at that
 15 time he signed a document that does indicate
 16 that he gave us authorization to send faxes.
 17 Q. We will discuss that document in a
 18 moment, but are you aware of any other documents
 19 that Carnival is relying on other than that
 20 February 2004 document for the proposition that
 21 Sherman Gottlieb authorized Carnival to send
 22 faxes to --
 23 A. No other request documents.
 24 MR. CIZMARIK: I am handing the
 25 witness what's been marked as Plaintiff's

13 (Pages 46 to 49)